



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

January 7, 1991

Mr. Murray Watson
TSTI System
P.O. Box 1308
Waco, Texas 76703

OR91-015

Dear Mr. Watson:

The Texas State Technical Institute has received a request under the Open Records Act, article 6252-17a, for a copy of a draft report prepared by the state auditor in regard to the technical institute. Your request was assigned ID# 10760. The state auditor addressed the draft report to the Higher Education Coordinating Board with the notation "draft report not for public release." You state that the technical institute received a copy of the draft report from the state auditor. You cite a number of provisions of the Open Records Act in support of your claim that you may withhold the draft report from public disclosure.

First, you raise section 3(a)(1), which requires governmental bodies to withhold information "deemed confidential by law, either Constitutional, statutory, or judicial decision." You assert that the draft report is covered by section 3(a)(1) because the state auditor has "deemed it" confidential. In the absence of statutory authority, however, a state agency may not make information confidential for purposes of section 3(a)(1). Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976) cert. denied, 430 U.S. 931 (1977). In this case, you cite no such statutory authority. Therefore, you may not withhold the draft report under section 3(a)(1).

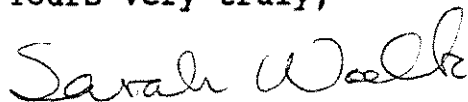
You also raise section 3(a)(3), the litigation exception. That provision is inapplicable here since the party that might be involved in litigation with the state already has the information. Open Records Decision No. 551 (1990).

You also raise sections 3(a)(7), 3(a)(12), and 7(c), but offer no explanation of why those provisions would permit the technical institute to withhold the draft report.

Finally, you raise section 3(a)(16), which applies to the working papers of the state auditor. That exception does not apply here since the audited entity already has the information in question. See generally Open Records Decision No. 580 (1990). For this reason, you must release the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-015.

Yours very truly,

A handwritten signature in cursive script that reads "Sarah Woelk".

Sarah Woelk
Assistant Attorney General
Opinion Committee

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Ref.: ID# 10760